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TRUST

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re Case No. 05-14659

Case No. CV07-02943 PJH

THE LEGACY ESTATE GROUP, LLC,  
formerly doing business as FREEMARK  
ABBEY WINERY, BYRON VINEYARD &  
WINERY, and ARROWOOD VINEYARD &  
WINERY

**REPLY OF JOHN M. BRYAN, JOHN M.  
AND FLORENCE E. BRYAN TRUST,  
AND J.M. BRYAN FAMILY TRUST IN  
SUPPORT OF MOTION TO WITHDRAW  
REFERENCE**

**Debtor**

28 U.S.C. § 157 (d)

Adv. No. 06-01173

**[NO HEARING SCHEDULED]**

OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS OF THE LEGACY ESTATE  
GROUP, LLC.

**Plaintiff,**

V.

JOHN M. BRYAN, JOHN M. AND  
FLORENCE E. BRYAN TRUST, J.M. BRYAN  
FAMILY TRUST, KULWINDER SIDHU,  
DEVINDER SIDHU, PACIFIC PARAGON

1 INVESTMENT FUND LTD, a British Columbia  
2 company, HARRY CHEW, and AIC CAPITAL  
PARTNERS, LLC, a California limited liability  
company

## Defendants.

And Related Cross-Actions

John M. Bryan (“Bryan”), John M. and Florence E. Bryan Trust (the “J&FB Trust”), and J.M. Bryan Family Trust (the “JMB Trust” and collectively, the “Bryan Defendants”), respectfully submit their reply to the *Official Committee of Unsecured Creditors*’ (the “Committee”) *Opposition to the Bryan Defendants’ Motion to Withdraw Reference* (the “Committee’s Opposition”) as follows:

1

## INTRODUCTION

The legal principles in this motion are straight forward, and not subject to serious dispute. Despite Judge Jaroslovsky's Report and Recommendation, there is ample legal support to withdraw the reference in this Adversary Proceeding. The Committee's Opposition fails to provide any legitimate basis for depriving J&FB Trust of this inalienable right to a jury trial in District Court, and indeed it cannot. By this motion, the Bryan Defendants simply request that the District Court consider the record and analyze the substantive issues presented in their Motion to Withdraw Reference. This request is consistent with principles of due process. The arguments set forth in the Committee's Opposition seek merely to obfuscate this simple logic through wrongful accusations of forum shopping and a lengthy, irrelevant, discussion of equitable claims. If there has been gamesmanship in this case; it has not been initiated by the Bryan Defendants. For instance, the Committee and many other Defendants also filed timely jury demands and then repudiated, withdrew, or otherwise eviscerated those demands in an attempt to obstruct J&FB's rights to a jury trial in District Court. The Committee's attempt to thwart J&FB Trust's due process rights is palpable. The Motion To Withdraw Reference as to the Bryan Defendants should be granted.

1                   **II.**2                   **ARGUMENT**3                   **A.     J&FB Trust is Entitled To A Trial By Jury in The District Court**

4                   The J&FB Trust timely made jury demands in its Answer and its Cross-Claims. J&FB Trust  
 5                   has never filed a Proof of Claim or otherwise waived its right to trial by jury. Where, as here, there is  
 6                   a right to trial by jury and all parties have not consented to permit the Bankruptcy Court to conduct  
 7                   that jury trial, the Local Rules contemplate a mandatory, immediate withdrawal of the reference so  
 8                   that the jury trial will be conducted in the District Court. N.D. Cal. Bankr. L. R 9015-2(b)  
 9                   ("reference of the proceeding shall be automatically withdrawn"). Despite the clear and  
 10                  unambiguous language of the Local Rules and this Court's prior rulings on this issue, the Committee  
 11                  mischaracterizes the relief sought by the Motion as an attempt to circumvent the holdings of the  
 12                  United States Supreme Court in Parklane Hosiery v. Shore, 439 U.S. 322, 333-335 (1979) and  
 13                  Katchen v. Landy, 382 U.S. 323 (1966). This assertion is misguided. The Bryan Defendants' request  
 14                  for the withdrawal of the reference is based not upon broad concepts of equitable adjudication, but  
 15                  upon black-letter law and the prior holdings of this Court.

16                  Specifically, in determining whether there is "cause" to withdraw a case from the bankruptcy  
 17                  court, "[a] district court should consider the efficient use of judicial resources, delay and costs to the  
 18                  parties, uniformity of bankruptcy administration, the prevention of forum shopping, and other related  
 19                  factors." Security Farms v. Int'l Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers  
 20                  (In re Security Farms), 124 F.3d 999, 1008 (9th Cir. 1997) (citing Orion Pictures Corp. v. Showtime  
 21                  Networks (In re Orion Pictures Corp.), 4 F.3d 1095, 1101 (2d Cir. 1993). Indeed, among the "other  
 22                  related factors" demonstrating "cause shown" for a withdrawal of the reference is the presence or  
 23                  absence of a jury request. See Hanfling v. Epstein, Becker & Green, P.C. (In re ATG Catalytics), No.  
 24                  C-04-1450, 2004 U.S. Dist. LEXIS 23617, at \*4 (N.D. Cal. 2004).

25                  J&FB Trust has requested a jury trial, a request to which it is clearly entitled due to its  
 26                  decision to refuse to be within the Bankruptcy Court's jurisdiction (by not filing a proof of claim

1 against the Debtor). Therefore, pursuant to applicable case law and unambiguous statutory language,  
 2 the reference should be withdrawn.

3 The Committee argues that the principles of issue preclusion will prevent J&FB Trust from its  
 4 legal right to a jury trial in this Court. As discussed in the Motion, all or most of the claims asserted  
 5 by the Committee against the J&FB Trust (*i.e.* claims of fraudulent transfer, improper distribution,  
 6 and breach of fiduciary duty) and all of those asserted by the J&FB Trust in this action (*i.e.* negligent  
 7 misrepresentation and fraudulent misrepresentation) are triable to a jury. See generally  
 8 Granfinanciera v. Nordberg, 492 U.S. 33 (1989) (right to jury trial for fraudulent transfer claim).

9 Furthermore, since the J&FB Trust did not file a proof of claim in the Bankruptcy Court, it  
 10 did not waive its right to a jury trial. See id. at 36. The Committee's attempts to discount the J&FB  
 11 Trust's right to a jury trial are indicative of its overall strategy of preventing the J&FB Trust from  
 12 adequately protecting its rights to have the issues presented herein decided by a jury through the  
 13 application of issue preclusion to any subsequent trial held by this Court. Principles of issue  
 14 preclusion should not be determinative. To allow such principles to control would deprive the J&FB  
 15 Trust of its legal right to a trial by jury in the District Court. The reference should be withdrawn.

16       **B. Sycamore Vineyard is not the *Alter Ego* of J&FB Trust**

17 As a basis for urging the Court to deny the motion to withdraw reference, the Committee  
 18 argues, on the most tenuous grounds, that the J&FB Trust's right to a jury trial may be lost if it is  
 19 found to be an *alter ego* of Sycamore Vineyards. Specifically, the Committee contends that  
 20 Sycamore Vineyards may be the *alter ego* of the J&FB Trust such that the filing of Sycamore  
 21 Vineyard's Proof of Claim waived the J&FB Trust's jury trial right. The Committee is well aware  
 22 that the J&FB Trust and Sycamore Vineyards are entirely separate and distinct legal entities. The  
 23 Committee's speculation to the contrary is nothing more than a red herring designed to divert this  
 24 Court's attention away from the issue before it—whether J&FB Trust has a right to have this matter  
 25 heard in the District Court before a jury. The answer is unequivocally yes.

26       The Committee made this same argument without success in the Bankruptcy Court. Under  
 27 California law, it is axiomatic that a trust – the J&FB Trust – is a distinct legal entity, separate from  
 28

1 its beneficiaries. Torrey Pines Bank v. Hoffman, 231 Cal.App.3d 308, 322, 282 Cal.Rptr. 354, 362  
 2 (Cal.App. 1991) (“the trust is preserved as a separate legal entity.”). Likewise, a partnership –  
 3 Sycamore Vineyards – is a distinct legal entity, separate from its partners. Cal. Corp. Code §1601.  
 4 Park v. Union Mfgr. Co., 45 Cal. App. 2d 401, 406 (Ct. App. 1994). A partnership’s proofs of claim  
 5 are treated as separate and distinct from the proofs of claim of the partners. In re US. Office Products  
 6 Co. Securities Litigation, 313 B.R. 73, 84 (D.C. Dist. 2004) (relying on bar date orders and general  
 7 partnership law and declining to accept party’s “bald assertions” that partnership and general partners  
 8 were “one and the same”).

9 The J&FB Trust is also recognized under California Probate Law as a separate entity and  
 10 qualifies for the exception to doctrine of merger pursuant to Probate Code §15209(b). The J&FB  
 11 Trust is the revocable trust of John M. and Florence E. Bryan who are the settlors. The J&FB Trust  
 12 was created as part of the Bryans personal estate plan. John M. Bryan and Alan Brudos are the  
 13 currently serving trustees of the J&FB Trust. While John M. and Florence E. Bryan are the  
 14 beneficiaries of the J&FB Trust during their lifetimes, upon the death of the survivor of them, any  
 15 then remaining balance of the J&FB Trust passes to the successor beneficiaries (who are not John M.  
 16 or Florence E. Bryan). Therefore, under these facts and circumstances, the doctrine of merger is  
 17 inapplicable to the J&FB Trust.

18 To address the Committee’s specious argument, John Bryan filed a declaration wherein he  
 19 explained the relationship between Sycamore Vineyards and J&FB Trust. See Declaration of John  
 20 Bryan, dated March 9, 2007 (the “Bryan Decl.”), annexed to Declaration of Rosalyn P. Mitchell in  
 21 support of Reply Brief of John M. Bryan, John M. and Florence Bryan Trust, and J.M. Bryan Trust  
 22 (the “Mitchell Decl.”) as Exhibit “A”. Sycamore Vineyards is a partnership controlled by Mr. Bryan  
 23 that is unrelated to this litigation but which filed a Proof of Claim. The J&FB Trust is Mr. and Mrs.  
 24 Bryan’s estate planning trust and holds, inter alia, title to some real estate. See Mitchell Decl., Ex.  
 25 “A” at ¶5. From time to time when the real estate is refinanced, it is briefly re-titled in the name of  
 26 the beneficiaries, and thereafter re-titled back into the trust. These are the real property transfers  
 27 identified by the Committee as the basis for their suspicions. See id.

1 Sycamore Vineyards, on the other hand, is a partnership that operates a vineyard. See id. at  
 2 ¶¶ 2-5. A copy of the Partnership Agreement is attached as Exhibit A to the Bryan Declaration. In  
 3 2005, Sycamore Vineyards, which files separate partnership tax returns, enjoyed gross income from  
 4 its farm operations of \$498,616 and posted a profit of \$36,698. See id. at ¶¶ 2-5. Sycamore Vineyard  
 5 conducts its farming operations on real property leased to it by an entirely different trust, the J. M.  
 6 Bryan Family Trust. See id. at ¶5 and Exs. "B" and "C". The J. M. Bryan Family Trust was formed  
 7 by Mr. Bryan's mother; and its beneficiaries are Mr. Bryan and his children. See id. at ¶5

8 Sycamore Vineyard is not a *alter ego* of J&FB. In fact, there is almost no direct connection  
 9 between Sycamore Vineyards and the J&FB Trust. Sycamore Vineyards conducts an active farming  
 10 business; the J&FB Trust holds title to unconnected real property as essentially passive investments.  
 11 The property which Sycamore Vineyards leases to operate its business is not owned by the J&FB  
 12 Trust. The Committee's Opposition provides no legal basis on which Sycamore Vineyards' waiver  
 13 of its right to jury trial can be imputed to the J&FB Trust.

14 **C. Withdrawal of the Reference As to the Bryan Defendants Serves the Policies of  
 15 Judicial Efficiency and will Reduce Delay and Costs to all Parties**

16 The withdrawal of the reference as to all Bryan Defendants, not just J&FB Trust, will result in  
 17 the efficient use of judicial resources, reduce delay and cost to the parties and provide and aid  
 18 uniformity of bankruptcy administration. While the Report and Recommendation of Judge  
 19 Jaroslovsky asserts that the Motion may have been filed in an attempt to "withdraw the reference for  
 20 improper purposes, including a desire to delay litigation or make it more expensive for a bankruptcy  
 21 estate . . . to prosecute", such assertion does not comport with the facts and circumstances of the  
 22 present case. See Mitchell Decl., Ex. "C". To the contrary. The Bankruptcy Court has  
 23 acknowledged that there are issues in the Adversary Proceeding that are not appropriate for  
 24 determination by the Bankruptcy Court. Neither the Report and Recommendation or the  
 25 Committee's Opposition mention Judge Jaroslovsky's order of abstention involving the Bryan  
 26 Defendants' cross-claims. In his abstention order, Judge Jaroslovsky declined to rule on issues  
 27 relating to the cross-claims in the adversary proceeding on the grounds that the claims "will have no

1 impact on the bankruptcy estate” and he determined that “it [was] appropriate to abstain from hearing  
 2 the matter.” Requiring two or three separate trials in two different courts does not comport with the  
 3 policies articulated by this Court to be considered in a decision regarding withdrawal of the reference.  
 4 Specifically, withdrawal of the reference as to all Bryan Defendants will result in the most efficient  
 5 use of judicial resources, minimize costs (including those of the above-captioned debtor’s (the  
 6 debtor’s estate) and promote the uniformity of bankruptcy administration. If the reference is not  
 7 withdrawn, not only will the Bankruptcy Court be required to decide on the issues present in this  
 8 case, but also this Court will need to provide a determination as to the rights of the J&FB Trust –  
 9 clearly, such a scenario will result in the inefficient use of judicial resources and this Court or some  
 10 other will be required to resolve the issues raised in the Bryan Defendants’ Cross-Complaint.  
 11 Moreover, both the J&FB Trust and the Committee will be subjected to additional costs and  
 12 unnecessary delay if they are required to participate in two separate trials. Finally, forcing the parties  
 13 to present their case to the Bankruptcy Court and then to this Court will achieve a result at odds with  
 14 the policy of uniformity of bankruptcy administration.

15           **D. This Court Should Not Adopt the Report and Recommendation of the**  
 16           **Bankruptcy Court Judge**

17           After the Bryan Defendants filed the instant motion, this court filed its Order Re: Report and  
 18 Recommendation of Motion to Withdraw Bankruptcy Court’s Reference on June 25, 2007. See  
 19 Mitchell Decl., Ex. “B”. On June 28, 2007, Judge Jaroslovsky issued his Bankruptcy Judge’s Report  
 20 and Recommendation Regarding Withdrawal of Reference (“Report and Recommendation”). See id.,  
 21 Ex. “C”.

22           In the Report and Recommendation provided by Judge Jaroslovsky, the Bankruptcy Court  
 23 articulates two major reasons why the Motion should be denied, and provides some informal  
 24 comments regarding the improper use of a motion to withdraw the reference. First, the Report and  
 25 Recommendation cites the fact that the issues in the instant case are “well within the ordinary  
 26 experience and expertise of the bankruptcy court”, Mitchell Decl., Ex. “B” at ¶ 1, and that the “case  
 27 has been litigated in the bankruptcy court for over seven months during which time the court has

already made several key rulings.” Id. at ¶ 2. The Bryan Defendants do not dispute either of these assertions. However, neither the expertise of the Bankruptcy Court, nor the fact that the case has, to date, been litigated in the Bankruptcy Court has any bearing whatsoever on whether the reference should be withdrawn. See, e.g., Security Farms v. Int'l Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers (In re Security Farms), 124 F.3d 999, 1008 (9th Cir. 1997). As discussed, supra, the most efficient use of judicial resources, reduction of cost to the parties and uniformity of bankruptcy administration will result in the withdrawal of the reference. The withdrawal of the reference will prevent a second, nearly identical trial to be heard by this Court – clearly, the prevention of a second trial comports with the underlying purpose of withdrawing the reference. Moreover, the presence of the J&FB Trust’s jury demand provides even greater support that the reference should be withdrawn. See, e.g., Hanfling v. Epstein, Becker & Green, P.C. (In re ATG Catalytics), No. C-04-1450, 2004 U.S. Dist. LEXIS 23617, at \*4 (N.D. Cal. 2004) (holding that presence of jury request demonstrates “cause shown” for withdrawal of the reference).

Second, the Report and Recommendation makes clear that the bankruptcy court is entertaining the Committee’s assertion that the J&FB Trust is an alter ego of Sycamore Vines and, therefore, the jury request made by the J&FB Trust may be invalid. See Mitchell Decl., Ex. “B” at ¶¶ 3-4. As more fully discuss herein, the Committee’s alter ego argument merely is another of many attempts to prevent the J&FB Trust from receiving the jury trial to which it is entitled. The fact that the Bankruptcy Court places any credence in the Committee’s illusory argument demonstrates the need for these issues to be determined by this Court. Following the Report and Recommendation, the rights of the J&FB Trust will be held in abeyance through the stall tactics of the Committee, and the resulting drain upon judicial resources in determining the validity of the Committee’s argument is improper and unnecessary. A withdrawal of the reference to the Bankruptcy Court will allow this Court to hear all of these matters one time, thus promoting judicial efficiency, reducing delay, and allowing for uniformity in bankruptcy administration.

By the Report and Recommendation, the Bankruptcy Court seizes upon the opportunity to express its concern that the Motion was brought for improper purposes. See id. at p.2:14-18. The

1 bankruptcy court's assumption is incorrect. In its simplest terms, the J&FB Trust, and the Bryan  
2 Defendants, are trying to reduce their costs, as well as the cost to the Debtor's estate, by having all of  
3 the issues of this Adversary Proceeding brought before a single tribunal. Moreover, the relief sought  
4 by the Motion represents a valid exercise of the rights of the J&FB Trust. The Report and  
5 Recommendation apparent dismissal of such rights is indicative of the need for the reference to be  
6 withdrawn.

III.

## **CONCLUSION**

9       For the foregoing reasons, the claims against the Bryan Defendants, and the claims asserted  
10 by them, should be adjudicated in the District Court. On July 10, 2007, the Bankruptcy Court filed  
11 its Scheduling Order and Notice of Trial. See id., Ex. "D". Pursuant to the scheduling order, this  
12 matter is set for trial in Bankruptcy Court on November 13, 2007. Given the trial date, the Bryan  
13 Defendants respectfully request that the Court withdraw the reference pursuant to 28 U.S.C. § 157(d)  
14 and Bankruptcy Local Rule 5011-2 and grant such further relief as may be just and proper.

NIXON PEABODY LLP

DATED: July 20, 2007

By:

/s/

Glenn E. Westreich  
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JOHN M. BRYAN, JOHN M. AND  
FLORENCE E. BRYAN TRUST,  
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## PROOF OF SERVICE

**CASE NAME:** *In re The Legacy Estate Group, LLC, et al.*  
*The Official Committee of Unsecured Creditors of the Legacy Estate Group,*  
*LLC v. Bryan, et al.*

**COURT:** U.S. Northern District of California

**CASE NO.:** CV07-02943 PJH

**Bankr. Case No.:** 05-14659 AJ

**Adv. Case No.:** 06-01173

**NP NO.:** 044963.000002

I, the undersigned, certify that I am employed in the City and County of San Francisco, California; that I am over the age of eighteen years and not a party to the within action; and that my business address is Two Embarcadero Center, Suite 2700, San Francisco, CA 94111-3996. On this date, I served the following document(s):

➤ REPLY OF JOHN M. BRYAN, JOHN M. AND FLORENCE E. BRYAN TRUST, AND  
J.M. BRYAN FAMILY TRUST IN SUPPORT OF MOTION TO WITHDRAW  
REFERENCE

on the parties stated below, through their attorneys of record, by placing true copies thereof in sealed envelopes addressed as shown below by the following means of service:

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X : By Electronic Filing – I have reviewed the Order re Electronic Service of Pleadings in Case No. CV07-02943 PJH pursuant to Local Rule 5-4 and General Order 45. I am serving the above documents as required by the Order re Electronic Service of Pleadings in Case No. CV07-02943 PJH and as instructed under the Electronic Case Filing Program.

Addressee(s)

**PLEASE SEE ATTACHED SERVICE LIST**

I declare under penalty of perjury that the foregoing is true and correct. Executed on **July 20, 2007**, at San Francisco, California.

Carolyn Ernsler  
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